

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GEORGE LEVY, ET AL.

Plaintiff,

v.

AERION RENTAL SERVICES,LLC

Defendant.

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CIVIL ACTION NO. 5:14-CV-00580-OLG

Jury Demanded

**PLAINTIFF'S SUPPLEMENT TO RESPONSE OPPOSING DEFENDANT'S
MOTION TO RECONSIDER (Dkt 19)**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, George Levy, individually, and on behalf of similarly situated present and former employees, hereinafter referred to as "Plaintiffs" complaining of AERION RENTAL SERVICES, LLC., and files this supplement to his response to Aerion Rental Services, LLC's Motion for Reconsideration of Order Denying Motion to Dismiss Under Rule 12(b)(5) (Dkt 19) and would show unto the Court the following:

Defendant's Motion to Dismiss Should Again Be Denied

1. Defendant has again asked the Court to dismiss alleging failure to serve pursuant to Federal Rule Evidence 4, requesting that the court review its prior ruling on its initial Motion to Dismiss (Dkt 18). Defendant correctly alleges that while Defendant Aerion was served with the summons, the Complaint may not have been served on the agent for service. This was an error that apparently occurred because the complaint was not attached when the summons was forwarded to the process server, a mistake or error that still may be corrected.

2. Plaintiff has until October 25, 2014, to effect service upon Defendant. Fed. R.Civ.Proc. 4(m) provides that a Plaintiff has 120 days from the date the complaint is filed to serve defendant before a Fed. R.Civ.Proc. 4 Motion to Dismiss is ripe for consideration.

3. Plaintiff requested a reissuance of the summons on September 5, 2014, so that Defendant's agent could be properly served with a copy of the summons and a copy of the First Amended Complaint; this would cure any alleged improper service or failure to serve Defendant with a copy of the Complaint. The second summons was issued on September 5, 2014 (see Second Request for Summons issued September 5, 2014, Dkt 21). Service was attempted again on September 8, 2014, but the process server was told that the agent for service was out today.

4. As a result, the process server tried again on the evening of September 8, 2014. As indicated by the attached Proof of Service, Ben Bernard, registered agent for Defendant was served with the summons and the First Amended Complaint.

5. Defendant's Motion to Dismiss was properly denied and the Motion to Reconsider the Order Denying Defendant's Motion to Dismiss should also be denied as service has been timely perfected.

PRAYER

Wherefore, Plaintiff, individually and on behalf of all similarly situated employees, prays that the court enter an order denying Defendant's Motion for Reconsideration of Order Denying Defendant's Motion to Dismiss and all other and further relief as may be necessary and appropriate and to which Levy and the other Day Rate Workers may show himself/themselves justly entitled.

Respectfully Submitted,

By: /s/ Adam Poncio
Adam Poncio
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2014, a copy of the foregoing document was electronically filed. Notice of this filing will be sent to counsel of record for all parties by operation of the Court's Electronic Filing System:

William Stukenberg
Jeff Barnes
Jackson Lewis PC
Wedge International Tower
1415 Louisiana, Suite 3325
Houston, Texas 77002
713-650-0404 Telephone

/s/ Adam Poncio
Adam Poncio

Civil Action No. 5:14-cv-00580- OLG

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) _____
was received by me on (date) _____

☒ I personally served the summons on the individual at (place) Ben Bernard at [redacted]
Ed Lafayette, 70508 Summons/First on (date) 9/9/14; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
_____ on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 9/9/14

[Signature]
Server's signature
Scott H. Frank
Printed name and title

117 W. Convent St
Lafayette, LA 70501
Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset